

DECISION



24646
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-210669

DATE: April 1, 1983

MATTER OF: A G Steel, Inc.

DIGEST:

1. Bid received on total small business set-aside solicitation which indicates bidder would not furnish products manufactured or produced by small business concerns was properly rejected as nonresponsive.
2. Allegation, after bid opening, that questions whether any small business concerns could manufacture or produce item procured by total small business set-aside is untimely and is not for consideration on merits by GAO as it relates to apparent impropriety in solicitation which was not protested to agency prior to bid opening.

A G Steel, Inc. (Steel), a small business regular dealer, protests the rejection of its bid submitted in response to solicitation No. 53-01310 issued by the Department of the Interior (Interior) for steel angles. The procurement was a 100-percent small business set-aside. Steel protested initially to the agency, apparently after bid opening. The protest is denied in part and dismissed in part.

Steel's bid was rejected as nonresponsive because it represented that the supplies to be furnished would not be manufactured or produced by a small business.

Steel contends that no small business can mine, smelt and manufacture the angles in question and that is why it represented on its bid that the angles to be furnished would not be manufactured or produced by a small business. Steel disagrees with Interior's position that punching or drilling holes in the angles constitutes a significant contribution to the manufacture of the end product. Steel argues that the hole punching is nothing more than a fabricating procedure to a product that is already manufactured.

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This Office has consistently held that where a bid on a total small business set-aside fails to establish the intention of the bidder, or, as in the present case, indicates a contrary intention, to furnish products manufactured or produced by small business concerns, the bid is nonresponsive and the bidder is ineligible for award. See Mil-Pac, Inc., B-181717, October 8, 1974, 74-2 CPD 196; Culligan, Inc., 58 Comp. Gen. 307 (1979), 79-1 CPD 149; Prestex, Inc., 59 Comp. Gen. 146 (1979), 79-2 CPD 411. Thus, Steel's bid was properly rejected as nonresponsive.

Steel questions the small business restriction because of its view that no small business firm is capable of manufacturing or producing this item. This relates to an alleged impropriety or defect in the solicitation which was apparent prior to bid opening. Under our Bid Protest Procedures, this issue is untimely since it should have been protested to the agency prior to bid opening for us to consider it now. 4 C.F.R. §§ 21.2(a) and (b)(1) (1982). See Burrelle's Press Clipping Service, B-196126, November 6, 1979, 79-2 CPD 333.

for Milton J. Aroskar
Comptroller General
of the United States